

office, unless the 180 calendar day period is extended as provided in this subpart.

(d) When CMS or its contractor is a party to an ALJ hearing and a party requests discovery under § 405.1037 against another party to the hearing, the adjudication periods discussed in paragraphs (a) and (c) of this section are tolled.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005; 74 FR 65335, Dec. 9, 2009]

**§ 405.1018 Submitting evidence before the ALJ hearing.**

(a) Except as provided in this section, parties must submit all written evidence they wish to have considered at the hearing with the request for hearing (or within 10 calendar days of receiving the notice of hearing).

(b) If a party submits written evidence later than 10 calendar days after receiving the notice of hearing, the period between the time the evidence was required to have been submitted and the time it is received is not counted toward the adjudication deadline specified in § 405.1016.

(c) Any evidence submitted by a provider, supplier, or beneficiary represented by a provider or supplier that is not submitted prior to the issuance of the QIC's reconsideration determination must be accompanied by a statement explaining why the evidence was not previously submitted to the QIC, or a prior decision-maker (see § 405.1028).

(d) The requirements of this section do not apply to oral testimony given at a hearing, or to evidence submitted by an unrepresented beneficiary.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37704, June 30, 2005; 74 FR 65335, Dec. 9, 2009]

**§ 405.1020 Time and place for a hearing before an ALJ.**

(a) *General.* The ALJ sets the time and place for the hearing, and may change the time and place, if necessary.

(b) *Determining how appearances are made.* The ALJ will direct that the appearance of an individual be conducted by videoteleconferencing (VTC) if the ALJ finds that VTC technology is available to conduct the appearance.

The ALJ may also offer to conduct a hearing by telephone if the request for hearing or administrative record suggests that a telephone hearing may be more convenient for one or more of the parties. The ALJ, with the concurrence of the Managing Field Office ALJ, may determine that an in-person hearing should be conducted if—

(1) VTC technology is not available; or

(2) Special or extraordinary circumstances exist.

(c) *Notice of hearing.* (1) The ALJ sends a notice of hearing to all parties that filed an appeal or participated in the reconsideration, any party who was found liable for the services at issue subsequent to the initial determination, and the QIC that issued the reconsideration, advising them of the proposed time and place of the hearing.

(2) The notice of hearing will require all parties to the ALJ hearing (and any potential participant from CMS or its contractor who wishes to attend the hearing) to reply to the notice by:

(i) Acknowledging whether they plan to attend the hearing at the time and place proposed in the notice of hearing; or

(ii) Objecting to the proposed time and/or place of the hearing.

(d) *A party's right to waive a hearing.* A party may also waive the right to a hearing and request that the ALJ issue a decision based on the written evidence in the record. As provided in § 405.1000, the ALJ may require the parties to attend a hearing if it is necessary to decide the case. If the ALJ determines that it is necessary to obtain testimony from a non-party, he or she may still hold a hearing to obtain that testimony, even if all of the parties have waived the right to appear. In those cases, the ALJ will give the parties the opportunity to appear when the testimony is given but may hold the hearing even if none of the parties decide to appear.

(e) *A party's objection to time and place of hearing.* (1) If a party objects to the time and place of the hearing, the party must notify the ALJ at the earliest possible opportunity before the time set for the hearing.

(2) The party must state the reason for the objection and state the time

and place he or she wants the hearing to be held.

(3) The request must be in writing.

(4) The ALJ may change the time or place of the hearing if the party has good cause. (Section 405.1052(a)(2) provides the procedures the ALJ follows when a party does not respond to a notice of hearing and fails to appear at the time and place of the hearing.)

(f) *Good cause for changing the time or place.* The ALJ can find good cause for changing the time or place of the scheduled hearing and reschedule the hearing if the information available to the ALJ supports the party's contention that—

(1) The party or his or her representative is unable to attend or to travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family; or

(2) Severe weather conditions make it impossible to travel to the hearing; or

(3) Good cause exists as set forth in paragraph (g) of this section.

(g) *Good cause in other circumstances.*

(1) In determining whether good cause exists in circumstances other than those set forth in paragraph (f) of this section, the ALJ considers the party's reason for requesting the change, the facts supporting the request, and the impact of the proposed change on the efficient administration of the hearing process.

(2) Factors evaluated to determine the impact of the change include, but are not limited to, the effect on processing other scheduled hearings, potential delays in rescheduling the hearing, and whether any prior changes were granted the party.

(3) Examples of other circumstances a party might give for requesting a change in the time or place of the hearing include, but are not limited to, the following:

(i) The party has attempted to obtain a representative but needs additional time.

(ii) The party's representative was appointed within 10 calendar days of the scheduled hearing and needs additional time to prepare for the hearing.

(iii) The party's representative has a prior commitment to be in court or at

another administrative hearing on the date scheduled for the hearing.

(iv) A witness who will testify to facts material to a party's case is unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained.

(v) Transportation is not readily available for a party to travel to the hearing.

(vi) The party is unrepresented, and is unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) that he or she has.

(h) *Effect of rescheduling hearing.* If a hearing is postponed at the request of the appellant for any of the above reasons, the time between the originally scheduled hearing date and the new hearing date is not counted toward the adjudication deadline specified in § 405.1016.

(i) *A party's request for an in-person hearing.* (1) If a party objects to a VTC hearing or to the ALJ's offer to conduct a hearing by telephone, the party must notify the ALJ at the earliest possible opportunity before the time set for the hearing and request an in-person hearing.

(2) The party must state the reason for the objection and state the time or place he or she wants the hearing to be held.

(3) The request must be in writing.

(4) When a party's request for an in-person hearing as specified under paragraph (i)(1) of this section is granted, the ALJ must issue a decision within the adjudication timeframe specified in § 405.1016 (including any applicable extensions provided in this subpart) unless the party requesting the hearing agrees to waive such adjudication timeframe in writing.

(5) The ALJ may grant the request, with the concurrence of the Managing Field Office ALJ, upon a finding of good cause and will reschedule the hearing for a time and place when the party may appear in person before the ALJ.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37704, June 30, 2005; 74 FR 65335, Dec. 9, 2009]